

MUTUAL SETTLEMENT AGREEMENT AND RELEASE

This Mutual Settlement Agreement and Release is made and entered into between John Frame ("Frame") on behalf of himself and his heirs, executors, trustee(s), administrators and assigns, the City of Trinidad ("City"), by and through its authorized representative pursuant to City of Trinidad Resolution No. 2005-09, the California Coastal Commission ("Commission") and the California State Coastal Conservancy ("Conservancy"). Frame, City, Commission and Conservancy are sometimes referred to in this agreement as the "Parties." In consideration of the exchange of promises made in this agreement, the Parties agree as follows:

RECITALS

WHEREAS, the City owns an approximate 12.6 acre parcel of property on the bluffs adjacent to the Pacific Ocean within the City's corporate boundaries ("City property"). The Conservancy holds an easement over the City property for Native American resource protection, open space and public access over the City property; and

WHEREAS, Frame owns real property in the City adjacent to the City property; and

WHEREAS, the Parties have been involved in litigation regarding several issues for several years, to wit: Humboldt County Superior Court case numbers: 92DR0104; DR970041; DR980359; DR010279, DR000544 and CV030643; and,

WHEREAS, the Parties Frame, City, Commission and Conservancy intend by this agreement to once and for all resolve their past, present and future disputes; and

WHEREAS, the Parties desire to establish the location of the public access way called variously the "Old Wagon Road Public Access Trail," and the "Wagner Street Access Trail," (hereafter "the Trail") within the City of Trinidad in order to provide for its future use for the

public benefit and further desire to establish the respective rights of the Parties with respect to maintenance and use of the property owned by the Parties on and directly adjacent to the Trail and further desire to manage the property adjacent to the coastal bluff in such a way as to preserve for as long as is reasonably possible the coastal bluff and the Trail; and to protect the Tsurai Village site; and

WHEREAS, the Parties desire to establish an agreed boundary between the City property and Frame's property adjacent to the Trail to resolve the issues and litigation between the Parties and to provide for the City and the Conservancy's exclusive use and maintenance of the land to the south of that boundary for the public benefit and to provide for Frame's exclusive use and maintenance of the land to the north of that boundary for his private benefit;

NOW, THEREFORE, in consideration of the mutual promises set further herein, it is agreed and resolved by and between Frame, the City, the Commission and the Conservancy as follows:

AGREEMENT

1. Agreed Boundary Between City and Frame Parcels

The Parties have a disagreement based on inconsistencies and discrepancies contained in available surveying data, maps, records, field notes, deeds of record and judicial opinions as to the exact location of the common boundary between the respective parcels of Frame and the City. The Parties agree that a complete resolution of their differences requires that they enter into a final, binding and complete agreement to establish an agreed boundary between the respective adjoining parcels of Frame and the City. Accordingly, the Parties agree that an agreed common boundary (hereafter "Agreed Boundary") shall be established as that line that was staked on the

ground at the parties' joint site inspection on June 15, 2005 and as depicted in the drawing attached as Exhibit A, which is incorporated herein by reference. The Parties agree to cooperatively and within thirty (30) days commission and obtain a survey of the Agreed Boundary by Michael O'Hern, licensed surveyor. The Parties agree that within sixty (60) days following completion of the survey they will execute and deliver all deeds and other documents necessary to establish the Agreed Boundary consistent with Exhibit A to escrow together with instructions to record all deeds and other documents necessary to establish the Agreed Boundary.

The Parties anticipate some delay in the recording of all deeds and other documents necessary to establish the Agreed Boundary which is attributable to securing the approval by the State's Director of General Services. Based on the promises exchanged herein and the Parties' covenant to perform all acts required by their agreements, the parties agree that upon completion of the Agreed Boundary survey (but before recordation of deeds and the Agreed Boundary survey), Frame may construct his fence as allowed in Section 6 below. Until the permitted fence is constructed the City agrees not to maintain the trail to the north of the Agreed Boundary.

The costs of performing the survey of the Agreed Boundary, and costs of escrow and recordation of the required documents to establish the Agreed Boundary, shall be borne by Frame because the City refuses to contribute.

2. Conservancy Easement

The Parties acknowledge that the State of California, acting by and through the Conservancy, holds an easement over the property owned by the City for preservation of public access, open space and Native American natural and archeological resources and that nothing in this agreement defeats or modifies in any way the easement rights of the Conservancy over City

property. The Conservancy's easement is over the property owned by the City and does not extend to the property confirmed to Frame under this agreement. The establishment of the Agreed Boundary shall not result in extension of the Conservancy easement to Frame's property.

As a material term of this settlement agreement, the Conservancy agrees that from and after completion of the Agreed Boundary survey and construction of the fence by Frame, the Conservancy shall not assert any right of public access that is north of the Agreed Boundary, i.e. over Frame's property.

Upon execution of this agreement, the Conservancy shall take such measures as are necessary to confirm the boundaries of its easement to be consistent with the Agreed Boundary, including recordation of deeds or other documents, which are subject to approval by the State's Director of General Services.

3. Maintenance of Property

The Parties agree that the City will have the exclusive right to maintain all land to the south of the agreed boundary line provided for in this agreement, with that right to be exercised consistent with all pertinent law and consistent with the Conservancy easement on the property. The Parties further agree that Frame will have the exclusive right to maintain all land which he owns to the north of the Agreed Boundary provided for in this agreement, with that right to be exercised consistent with all pertinent law.

The Parties acknowledge that pursuant to sections 30106 and 30600 of the Public Resources Code, subject to the adopted Local Coastal Plan of the City of Trinidad and its implementing ordinances, any change in the density or intensity of use of property and any placement or erection of any solid material or structure on property in the Coastal zone shall require a coastal development permit.

In the interest of preserving the coastal bluff and Trail, the Parties agree that the Trail will be no more than 3 feet wide, that the City will mow the grass on the bluff to approximately three to six inches (3" to 6") and that mowing will only occur on the three-foot wide footpath of the Trail (on the portion of the trail adjacent to Frame's parcels as of the date of this agreement). The City wants to protect public use of the Trail from encroaching vegetation growing over or onto the Trail from Frame's property; when that occurs, the City may trim the vegetation back to the south side of the fence. Whenever the City performs vegetation management on the south side of the Trail, the City shall cut vegetation on the coastal bluff to preserve vegetation intended to be permanent rather than annual at heights of not less than three feet nor more than six feet. The Parties agree that in exercising their respective maintenance rights under this agreement, no Party will dump vegetation or debris of any type over the coastal bluff.

4. Width and Location of the Public Access Trail

The Parties agree that the Trail shall be maintained by the City as set forth in Section 3 above, and that the City may narrow the Trail in its discretion, in consultation with the Conservancy, if conditions on the bluff require narrowing of the Trail and so long as the Trail remains reasonably passable. The Parties agree that the Trail maybe placed as close as is practical to the south of the Agreed Boundary provided by this agreement.

5. Preservation of Access to Trail

Frame agrees as part of the consideration for this agreement that he will accept a four-foot wide footpath unimpeded by vegetation on his property adjacent to the Trail over which the Humboldt North Coast Land Trust holds a pedestrian access easement in order to facilitate public access to the Trail. Nothing in this agreement is intended to defeat, enhance or modify in any

way the easement rights owned by the Humboldt North Coast Land Trust or to defeat, enhance or modify in any way the final coastal development permit that required dedication of the easement now owned by the Humboldt North Coast Land Trust.

6. Placement of Fence Within Boundary Line

Frame will submit an application to the City for a coastal development permit for construction of the fence, no higher than four (4) feet, to be placed within his property immediately adjacent to the Agreed Boundary. The fence will be constructed of redwood boards six inches in width, alternately spaced on horizontal boards. The City, Conservancy and Commission agree that Frame's right to place such a fence on his property immediately adjacent to the Agreed Boundary is a material term of this settlement agreement.

The City will at the next regular or special meeting of the Planning Commission take action on Frame's application for a coastal development permit to construct the fence no later than ten days following submission of the application and the required public notice. The City, the Commission, and the Conservancy shall not initiate an administrative appeal to the Coastal Commission of the coastal development permit issued to Frame for construction of the fence. The coastal development permit for the fence shall include that Frame shall have the right of access to perform maintenance of the fence on the City side of the agreed boundary without the necessity for obtaining a further coastal development permit or for obtaining an encroachment permit to perform the maintenance. If the Coastal Development Permit described above is not issued to Frame by the City of Trinidad and if Frame is not allowed to build the fence, this agreement shall be void.

7. 1994 Stipulated Judgment in Humboldt County Action No. 92DR0104

The Parties specifically intend to abide by and implement the 1994 stipulated judgment in Humboldt County Action No. 92DR0104. The Parties specifically intend to implement each and all provisions of the 1994 judgment with respect to the Trail within sixty (60) days of the effective date of this agreement, including placement and maintenance of equal signage for all of the secondary trails provided for in the 1994 agreement, as previously agreed to by the City and Frame.

8. Civil Code Section 1542

The Parties fully understand and hereby relinquish and waive any and all rights or benefit they may have under section 1542 of the California Civil Code which reads as follows: "A general release does not extend to claims which the creditor does not know or suspect exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Notwithstanding the positive intention of the Parties set forth in the recital section of this Agreement, the Parties specifically provide that they do not intend that this release shall apply to future violations of state or local law by any Party to this agreement, nor do they intend that this release shall apply to future violations of this agreement or the 1994 Stipulated Judgment and Settlement Agreement.

9. Effectiveness of Agreement

This agreement shall be effective upon execution of the agreement by all Parties.

10. Attorneys Fees and Costs

The Parties agree that all Parties shall bear their own costs and attorney's fees incurred in

connection with this agreement.

11. Free and Voluntary Agreement

Each Party represents and warrants that his/its execution of this agreement and release is free and voluntary and acknowledges its independent right, absent this agreement, to pursue his/its pending litigation.

12. Continuing Jurisdiction

The Parties agree that consistent with the 1994 Stipulated Judgment and Settlement Agreement, and California Code of Civil Procedure § 664.6, the Humboldt County Superior Court shall retain continuing jurisdiction over the Parties to enforce the terms of this agreement until there is performance of the agreement by all Parties.

13. Stipulated Judgment, Continuing Jurisdiction and Dismissals

It is hereby stipulated by and between the parties that Humboldt County Superior Court Case Number DR980359 is settled and judgment shall be entered in that action pursuant to the terms of this agreement, which are and shall be binding on the parties hereto.

Upon completion of the survey necessary to establish the Agreed Boundary, the Parties shall prepare and place with an agreed escrow agent instructions for filing with the Humboldt County Superior Court forms of dismissal with prejudice regarding all of the pending matters between the Parties including Humboldt County Superior Court case numbers DR010279, DR000544 and CV030643, but not Humboldt County Superior Court number DR980359 in which a stipulated judgment is being entered pursuant to this agreement. Prior actions between these parties have resulted in judgments and are not proper subjects of dismissals, including Humboldt County Superior Court Case Numbers 92DR0104 and DR970041. The dismissals

shall be filed with the court by the escrow agent once the deeds and Agreed Boundary survey are recorded.

14. Miscellaneous Clauses

a. The Parties shall perform any acts, including executing any documents, that may be reasonably related to or necessary to fully carry out the provisions and intent of this Agreement.

b. This Agreement may be amended only by written consent of both parties.

c. All notices, demands, requests or other communications required or permitted by this Agreement shall be in writing and shall be deemed duly served when personally delivered to the Party or an officer or agent of the Party, or when deposited in the United States mail, first class postage prepared, addressed as follows:

John Frame
Post Office Box 360
Trinidad, CA 95570

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

and

City of Trinidad
City Hall
Post Office Box 390
Trinidad, CA 95570

California Coastal Conservancy
1330 Broadway, Suite 1100
Oakland, CA 94612-2530

d. This Agreement shall be construed according to and governed by the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, affording to its fair meaning and not strictly for or against either any of the Parties.

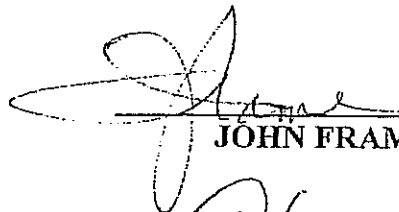
e. This Agreement constitutes the sole and only Agreement of the Parties regarding this subject matter; it correctly sets forth the rights, duties and obligation of each to the other. Any prior Agreements, promises, negotiations or representations concerning the Agreement, or

any of its subject matter, not expressly set forth in this Agreement are of no force or effect.

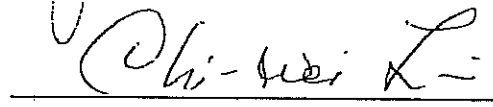
f. This Agreement shall be binding upon the Parties and their respective heirs, administrators, representatives, executors, successors and assigns and shall inure to the benefit of the Parties and each of them and to their heirs, administrators, representatives, executors, successors and assigns.

g. Nothing in this Agreement is, or shall be, alleged, claimed or construed by any Party hereto, their agents, counsel or representatives, to be a violation of any term or provision of any practice or policy; or a violation of any state law, federal law or any policy or regulation.

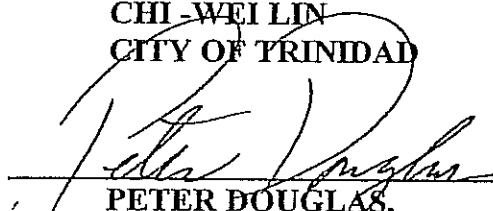
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JOHN FRAME

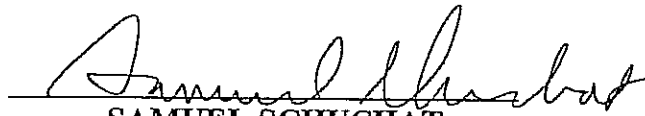
Date: 7/15, 2005


CHI-WEI LIN
CITY OF TRINIDAD

Date: 7/15, 2005

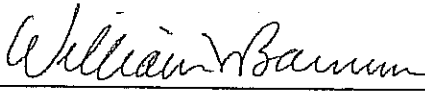

PETER DOUGLAS,
Executive Director,
CALIFORNIA COASTAL
COMMISSION

Date: 9/9/05, 2005

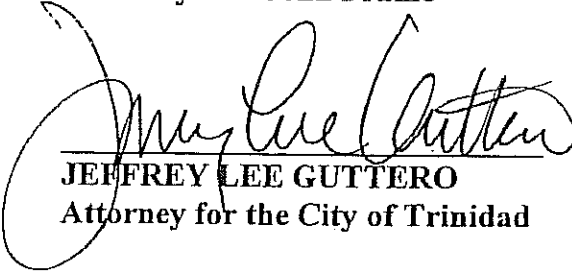

SAMUEL SCHUCHAT,
Executive Director,
CALIFORNIA COASTAL
CONSERVANCY

APPROVED AS TO FORM:

Date: July 13, 2005


WILLIAM F. BARNUM,
BARNUM & HERMAN
Attorneys for John Frame

Date: 9/16/05, 2005


JEFFREY LEE GUTTERO
Attorney for the City of Trinidad

Date: July 29, 2005

BILL LOCKYER, Attorney General of the
STATE OF CALIFORNIA


By 
CHRISTIANA TIEDEMANN
Deputy Attorney General
Attorneys for the California Coastal Commission
and the California Coastal Conservancy

EXHIBIT A

EXHIBIT A

OCEAN AVENUE

EAST STREET

N89°37'30"E 323.49
BASIS OF BEARINGS

LEGEND

- BRASS CAP MONUMENT, SEE BOOK 19 SURVEYS, PAGE 123
- SET 1/2" GALV. IRON PIPE WITH PLASTIC PLUG LS 4829

WAGNER STREET

FRAME
INSTRUMENT NO.
1990-20312-3

FRAME
INSTRUMENT NO.
1991-19899-3

POINT "A"

26.95
S81°15'05"E

63.83
S77°44'10"E

37.38
S74°03'00"E
26.58
S76°47'30"E

AGREEMENT LINE

AGREEMENT EXHIBIT

FOR

JOHN FRAME

& CITY OF TRINIDAD

IN

SECTION 23 T8N, R1W, H.M.

JULY, 2005 SCALE 1" = 30'

KELLY-O'HERN ASSOCIATES
EUREKA, CA

CITY OF TRINIDAD
INSTRUMENT NO.
1989-6473



Michael J. O'Hern

Michael J. O'Hern L.S. 4829
License expires 9/30/06
Dated JULY 26, 2005

DESCRIPTION OF AN AGREEMENT LINE FOR JOHN FRAME AND THE CITY OF TRINIDAD

BEGINNING at a point on the Southerly extension of the West line of that parcel of land described in a quitclaim deed to John R. Frame, Trustee of Trust dated October 30, 1985, recorded August 24, 1990 as Instrument No. 1990-20312-3, Humboldt County Records, at a point that bears N 81° 15' 05" W from a point identified herein as Point "A" for convenience, said Point "A" bears S 32° 52' 24" E, 372.99 feet from the monument at the intersection of East Street and Ocean Avenue, as shown in Book 19 Surveys, Page 123, Humboldt County Records;

thence S 81° 15' 05" E, 26.95 feet to said Point "A";

thence S 77° 44' 10" E, 63.83 feet;

thence S 74° 03' 00" E, 37.38 feet;

thence S 76° 47' 30" E, 26.58 feet to the Southerly extension of the East line of that parcel of land conveyed to Shirley L. Johnston and John R. Frame by deed recorded August 30, 1991 as Instrument No. 1991-19899-3, Humboldt County Records.

The Basis of Bearings for this description is Book 19 Surveys, Page 123, Humboldt County Records.

Prepared by:

Michael J. O'Hern

Michael J. O'Hern

LS 4829 Exp. 9-30-06

Dated JULY 26, 2005

